



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

July 29, 2008

Laurie Burt, Commissioner  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Re: Charles River and Alewife Brook/Mystic River CSO Variances

Dear Commissioner Burt:

This letter responds to your letter of July 8, 2008, whereby the Massachusetts Department of Environmental Protection (MassDEP) submitted adopted combined sewer overflow (CSO) variances to the Environmental Protection Agency (EPA) for review. The variances are for CSO discharges by the Massachusetts Water Resources Authority (MWRA), the City of Somerville, and the City of Cambridge to Alewife Brook/Upper Mystic River and for CSO discharges by the MWRA, the City of Cambridge, and Boston Water & Sewer Commission to the Lower Charles River/Charles Basin. MassDEP issued the variances for terms of three years on August 30, 2007 with effective dates of September 1, 2007 and October 1, 2007 for the Alewife Brook/Upper Mystic River and the Lower Charles River Basin, respectively. On July 15, 2008, MassDEP's General Counsel certified the variances as having been duly adopted pursuant to Commonwealth law. By today's letter, EPA approves these variances.

EPA reviews variances under Section 303 of Clean Water Act (CWA), which addresses EPA consideration of, and action on, state water quality standards. A variance typically is a short-term revision to an otherwise applicable water quality standard. 63 FR 36742, 36759 (July 7, 1998). EPA generally will only approve a state's variance where there is a demonstration that one of the factors that would justify removal of a designated use or establishment of a subcategory of use has been satisfied, specifically the factors published at 40 C.F.R. 131.10(g). Id. In addition, a variance typically applies to individual dischargers and for a specific pollutant(s) and does not otherwise modify the applicable water quality standards. Id. Under Section 303(c)(1) of the CWA and 40 C.F.R. 131.20(a), a variance should be reviewed, at a minimum, every three years, and extensions are warranted only where the conditions for granting the variance still apply. Id. Upon expiration of the variance, the underlying numerical criteria have full regulatory effect. Id.

Consistent with these considerations and based on review of the materials submitted, pursuant to Section 303(c)(3) of the Clean Water Act (CWA) and 40 C.F.R. 131.21, I hereby approve the variances for the City of Somerville and the City of Cambridge to Alewife Brook/Upper Mystic River and the variances for the City of Cambridge and Boston Water & Sewer Commission to the Lower Charles River/Charles Basin, and the variances for the MWRA.

On March 14, 2006, EPA approved variances MassDEP submitted to EPA on March 13, 2006, for the MWRA's CSO discharges to the Alewife Brook/Upper Mystic River and the Lower Charles River Basin. EPA's action approved triennial reissuance of the variances through the year 2020, subject to conditions specified in EPA's March 14, 2006 letter. While EPA's 2006 approval action was intended to approve MassDEP's anticipated reissuance of the MWRA variances every three years through 2020, EPA by today's action has decided to take a separate approval action on MassDEP's 2007 reissuance of the variances for MWRA. EPA would anticipate taking future actions on MassDEP's reissuance of the variances for MWRA. In addition to determining that the variances satisfy the relevant CWA and regulatory requirements, EPA also has confirmed that MassDEP's reissuance of the variances for MWRA on August 30, 2007, was consistent with the conditions set forth in EPA's 2006 approval.

In accordance with the variances, CSO discharges from permitted outfalls are not required to meet effluent limits based on the Massachusetts Class B bacteria criteria during events when flow in the collection system exceeds the collection system conveyance capacity as a result of precipitation or snow melt. The bacteria variances require continued implementation of CSO long term control measures consistent with MWRA's 1997 Final CSO Facilities Plan, as amended, for Alewife Brook /Upper Mystic River and the Lower Charles River Basin (the Long Term Control Plan) and do not in any way delay the pace of implementation that would occur without the variances. Rather, the projects that are to be implemented during the term of these variances will improve water quality in associated waters.

Numerous analyses have been completed since the late 1980s evaluating alternatives for eliminating combined overflows from the collection system tributary to the Deer Island Treatment Plant. Among these are the 1997 CSO Facilities Plan and Environmental Impact Report; the 2001 Notice of Project Change for the Long Term Control Plan for Alewife Brook; the July 1, 2003 MWRA Final Variance Report for the Alewife Brook /Upper Mystic River; and the January 2004 Cottage Farm CSO Facility Assessment Report. Based on these analyses, MassDEP determined that proceeding at this time with controls necessary for full attainment of the applicable Class B bacteria criteria and associated recreational use would result in substantial and widespread economic and social impact as those terms are used in 40 C.F.R. 131.10(g)(6). EPA's independent analysis of these impacts confirms MassDEP's demonstration regarding the regulatory criteria. EPA agrees that it is not feasible to fully attain the Class B bacteria criteria and associated recreational use within the three year term of the variances. Therefore, EPA approves these MassDEP CSO variances for the MWRA, the City of Somerville, the City of Cambridge, and Boston Water & Sewer Commission, which revise the water quality criteria for bacteria by rendering them inapplicable to the identified permittees for CSO discharges into the identified receiving waters during specified wet weather events.

We look forward to continued cooperation with Massachusetts in the development, review, and approval of water quality standards pursuant to our responsibilities under the Clean Water Act. If you have any questions, please contact Bill Beckwith (617-918-1544) or Michael Wagner (617-918-1735).

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen S. Perkins", written over a horizontal line.

Stephen S. Perkins, Director  
Office of Ecosystem Protection

cc: Glenn Haas, MassDEP  
Marcia Sherman, MassDEP  
Vernon Lang, USF&WS  
Mary Colligan, NOAAF  
Peter Colossi, NOAAF  
Danielle Fuligni, EPA SSB